THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.24342 OF 2005

Dated: 17-11-2005

Between

Smt. Varaka Nandini, W/o. Late V. Krishna Murthy, D/o. Sundaram, Private Doctor, Kalpatharu Road, Sathupalli – 507 303, Khammam District.

...PETITIONER

AND

The Zonal Manager, LIC of India, South Central Zonal Office, Jeevan Bhagya, Saifabad, Hyderabad – 500 063 and others.

...RESPONDENTS

ORDER:

This writ petition is filed seeking a Writ of Mandamus to declare the action of the respondent in repudiating the claim of the petitioner as a nominee under policies bearing No.681917425 and 681918738 on the life of her late husband, by not considering the representations dated 28.08.2002 and 16.09.2002 as arbitrary and illegal.

Petitioner is the wife of Late V. Krishna Murthy and aged about 23 years when the writ petition was filed in November 2004.

It is stated that she got married on 23.061999 and they led a happy marital life. Her husband was working as a teacher at ZPSS, Gowridevapeta and while living with her husband they received information about sickness of her mother. Accordingly, they left for Sathupalli and

were forced to stay back. In that connection her husband sent a leave letter availing leave from 02.08.2000 to 19.08.2000 for a period of 16 days. Thereafter, her husband further availed leaved on two occasions, due to sickness of her mother, for 3 days from 28.11.2000 to 30.11.2000 and another spell of 3 days from 13.12.2000 to 15.12.2000. It is submitted that during her husband's life time he obtained two insurance policies, bearing No.681917425 and 681918738 for an amount of Rs.25,000/- each, reflecting her name as nominee. It is stated that her husband also took 4 other policies, prior to the above said two policies, wherein the name of her husband's mother was reflected as nominee. Her husband died on 24.08.2001. Though the insurance amount covered under the earlier 4 policies was paid but the respondents refused to pay the insurance amount covered under the said two policies on the ground that her husband obtained the two policies three months prior to his death and he suppressed the fact that he was suffering from viral hepatitis.

Learned counsel for the respondents submits that in view of Section 46 of the Insurance Act, 1938 (for short 'the Act'), the only forum that available to the petitioner is to approach a Civil Court of competent jurisdiction. The Court as defined under Section 2(vi) of the Act means the principal Civil court of original jurisdiction in a district, and includes, the High Court in exercise of its original civil jurisdiction.

It is further stated that the Supreme Court in the case of
LIFE INSURANCE CORPORATION OF INDIA v. SMT. KIRAN SINHA held that the High Court cannot direct the payment of money claimed under the insurance policies in question in a petition filed under Article 226 of the Constitution of India and the only remedy available to the aggrieved person is to approach a Civil Court.

On the other hand, learned counsel for the petitioner submits that under Section 45 of the Act, the life insurance corporation cannot repudiate the policy on the ground of mis-statement by the policy holder and in support of his contention he relied on the judgment of this Court in **BRANCH MANAGER, LIC OF INDIA v. AMBATI LAXAMMA** and also the judgment of a Division Bench of Rajasthan High Court in **LIC OF INDIA v. DISTRICT PERMANENT LOK ADALAT**.

Both the above cases relate to civil jurisdiction. Therefore, I am of the opinion that the only remedy available to the petitioner is to approach the competent Civil Court.

The writ petition is accordingly dismissed with a liberty to the petitioner to approach the competent Civil Court for appropriate relief. If any suit is filed within six weeks from the date of receipt of this order the concerned Civil Court may entertain and dispose of the same in accordance with law.

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V. ESWARAIAH, J

November 17, 2005

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